



HARYANA AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
HARYANA VANIYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO./HAR/HAAR/R/2019-20/16  
(In Application No.: 16/2019-20, dated 13.11.2019)

Name & Address of the Applicant	: M/s TATA SIA AIRLINES LIMITED, Floor 10, Sector 43, Golf Course Road, Gurgaon-122002 Haryana
GSTIN of the Applicant	: 06AAECT8346F1Z8
Date of Application	: 13.11.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	: (iv) admissibility of input tax credit of tax paid or deemed to have been paid; (v) determination of the liability to pay tax on any goods or services or both; (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Date of Personal Hearing	: 17.12.2019
Present for the Applicant	: Sh. Saurabh Aggarwal, CA; Sh. Nikit Popli, CA; Ms. Ridhima Mehta, CA and Ms. Pritha Murarka, CA

Memo No. 1056/AAR

Date: 28.08.2020

**1. Brief submission of the applicant:**

1.1 That TATA SIA Airlines Limited ('TSAL' or 'the Applicant' or 'the Company') is a company incorporated in India with its presence in various States. Currently, TSAL has obtained GST registrations in 19 states; the said inter-alia includes Haryana where the corporate office of the Company is located. The Company is essentially engaged in the provision of scheduled passenger transport services by air and cargo services for transportation of goods by air.

1.2 That the Company procures various goods/ services directly used for air transportation services (including passenger and cargo) for all other States at its corporate office Haryana (hereinafter referred to as "HO") under the GSTN of Haryana (Bill to Location) and while the goods are delivered at the respective locations (hereinafter referred to as "BO"), which inter-alia includes the following:

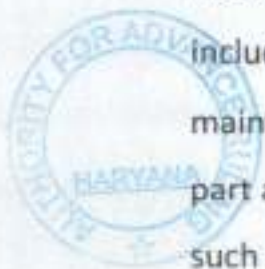
- a) Services in the nature of lease of aircraft
- b) Services in the nature of assurance for aircraft repair
- c) Spares for aircrafts
- d) Any other cost related to upkeep and maintenance of aircraft incurred by the HO



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The said aircrafts being the core goods for the Company's business, it needs to ensure effective working of the same at all times and in all locations (BO) of the various measures taken by the Company to ensure minimal/ no disruptions due to inefficiencies in any aircraft, TSAL maintains a pool of spares which can be used by any BO of the Company. However, the ownership of the said spares rest with the HO.

- 1.3 That in reference to the procurement, company has taken aircraft under lease model. For the same, the applicant has entered into various contracts, (contractual location being Haryana) with different vendors on which the IGST is being paid under reverse charge mechanism @ 5% on the lease rentals in the State of Haryana. Further, the spares are also ordered by the HO of the Company located in the State of Haryana and the bill of entry for customs clearance is also filed with the GSTIN of the State of Haryana and however the goods are dispatched at the respective locations as per the requirement. Similarly, the Company also procures assurance services (for repair of aircraft) from vendors located outside India in the State of Haryana and pays the GST under reverse charge mechanism in the State of Haryana.
- 1.4 That the said aircrafts in running condition are being used by all the other BO's of the Company wherever the airport is located. However, the cost of the said expenses (as referred to above) is being borne by the HO as the said aircrafts along with the spares therein are used at multiple locations at any given point of time for e.g., An aircraft in a day may fly from Delhi to Mumbai, then from Mumbai to Ahmedabad, then Ahmedabad to Kolkata and then Kolkata to Delhi.
- 1.5 That in view of the above, the HO has entered into an agreement such that aircrafts are up and running condition (at all point of time) with its BO's. The said service includes carrying out preventive and routine maintenance, to check safety controls including supply of parts/consumables. The very intention is to provide the maintenance services i.e. upkeep the aircraft and as supply of parts follows as a part and parcel of providing the maintenance service comprehensively. The cost of such supply of maintenance services including assurance (shall be equal to the cost of assurance services plus the cost of spares plus any other costs incurred in relation to upkeep and maintenance of the aircrafts by the HO) plus mark-up



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*[Handwritten signature]*

thereon is charged by the HO to the BO's as maintenance of aircrafts. A consolidated lump sum is charged by the HO to the BO based on turnover of each BO to the turnover of the Company as a whole.

1.6 Where the HO has such spare parts available, the same may be transferred to the BO as and when required for use in terms of the maintenance arrangement between the HO and BO, ensuring smooth working condition of aircrafts. Further, the said spare part so transferred from HO to the BO may be returned by the BO to the HO after use or may be transferred on HO's instructions to any other BO, where there is a similar requirement.

**2. Questions on which Advance Ruling is required:**

2.1 Whether the charges in lieu of maintenance services recovered by the HO from the BO shall qualify as supply of service by the HO to BO?

2.2 Whether the input GST credit w.r.t. procurements referred to in this Application needs to be claimed by the Applicant under the normal GSTIN of the Company or the Applicant needs to take a separate GSTIN as an input service distributor to distribute the GST credits from HO to BO?

**3. Discussion and findings:**

**Question No. 1**

3.1 The present application is related to determine whether the supply of goods and services from HO to BO comes under the purview of supply of services. Therefore, it is pertinent to discuss about the relevant provisions of 'supply'.

3.1.1 Sub section (1) of Section 7 of the CGST Act which is related to the scope of supply clearly states as under:

*(1) For the purposes of this Act, the expression "supply" includes –*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business;*



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- (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II*

In the present case, the applicant is providing maintenance services, supply of spare parts for a consideration in the course of or furtherance of business and hence the supply amounts to "supply" under Section 7(1) of the CGST Act, 2017.

3.1.2 Entry 2 of Schedule 1 of the CGST Act states the following:

*"Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business"*

- 3.2 The applicant has submitted that the company (HO) under the GSTN of Haryana provides services in nature of assurance for aircraft repair alongwith any other cost related to upkeep and maintenance of aircraft.
- 3.3 The HO has entered into an exclusive agreement with its BO's for providing preventive and routine maintenance. The very intention is to provide the maintenance services i.e. to upkeep of aircraft which shall be the principal supply of service.
- 3.4 It is necessary here to discuss that the HO is charging a mark up over and above the cost of assurance services, cost of spare parts and any other cost incur in relation to upkeep and maintain the aircrafts, thereby adding value to the cost and hence, incurring a taxable supply of service as per the provisions of CGST Act, 2017.

3.5 Section 25(5) of the CGST Act stipulates the following:

*"Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of **distinct persons** for the purposes of this Act"*

  
Subject:-



- 3.6 That on the basis of Section 25(5) of the CGST Act, the applicant opined that the HO and BO, being two separate GST registrations, qualify as distinct persons under the GST regime. Hence, basis entry 2 of Schedule I of the CGST Act, any supply of goods or services from the HO to BO would be covered in the scope of supply and trigger a levy of GST.
- 3.7 It is irrelevant to admit that the said charge towards maintenance of aircrafts from HO to BO is merely an internal MIS entry and should not be looked at as provision of services by HO to BO because they both have separate GST registrations and qualify as distinct persons under the GST regime.
- 3.8 In view of the foregoing, it is clear that the charges of maintenance from HO to BO shall qualify as supply of service and GST is payable on the said charges recovered from BO's.

Question No. 2

- 3.9 The second question is related to the input tax credit distribution method from HO to BO. Let us discuss the relevant provisions related to ITC. Section 16 of the CGST Act stipulates as under:

*"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person".*

- 3.10 The applicant want to know whether the **input GST credit wrt procurements referred to in this application** needs to be claimed by the Applicant under the normal GSTIN of the Company or the Applicant needs to take a separate GSTIN as an input service distributor to distribute the GST credits from HO to BO?

- 3.11 Now, it is necessary to understand the procurements referred in this application on which the applicant takes input tax credit. In this regard it is found that the company procures various goods/ services directly used for air transportation services (including passenger and cargo) for all other States at its corporate office

Haryana ( "HO") under the GSTN of Haryana (Bill to Location) and while the goods are delivered at the respective locations ( "BO"), which inter-alia includes the following:

- (i) Services in the nature of lease of aircraft;
- (ii) Services in the nature of assurance for aircraft repair;
- (iii) Spares for aircrafts; and
- (iv) Any other cost related to upkeep and maintenance of aircraft incurred by the HO

3.12 Now, to decide the method of distribution of input tax credit from HO to BO, it is pertinent to discuss the relevant provisions regarding 'input service distributor'. The term 'input service distributor' is defined under section 2(61) of the CGST Act, as under:

*"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of goods or services or both having the same Permanent Account Number as that of the said office".*

3.13 The ISD is the 'recipient' as defined under section 2(93) of the CGST Act as it is the person making payment of consideration for the supply of goods or services. The very basis of the ISD related provisions under the CGST Act is that the ISD is not a supplier of goods or services, does not make any 'outward supply' under section 2(83) of the CGST Act but is entitled to distribute credit under the provisions related to distribution of ISD under the CGST Act and the rules made there under.

3.14 It is also important to note that the ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods). (Ref: GST Flyer, Chapter 10). Therefore, in the present case, the input GST credit pertaining to services only on the procurement made by HO towards maintenance of aircraft (including lease thereof) shall be distributed by way of input service distributor mechanism and the credit pertaining to goods (including capital goods) shall be distributed by way of normal registration mechanism.



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4. In view of the above, we pass the following :-

**Ruling:**

- 4.1 The activities undertaken by the applicant shall be covered as a supply as per Section (7) of the CGST Act, 2017, thus shall be liable to GST.
- 4.2 The input GST credit pertaining to services only on the procurement made by HO towards maintenance of aircraft (including lease thereof) shall be distributed by way of input service distributor mechanism and the credit pertaining to goods (including capital goods) shall be distributed by way of normal registration mechanism.

Ordered accordingly.

To be communicated.

19/01/2020  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST



  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

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Gurgaon-122002 Haryana

Copy to:

1. The Commissioner, Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner, Gurgaon (ST).
3. Deputy/ Assistant Commissioner, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.

o/c